

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:15-cv-00097-BO

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his official Capacity
as Sheriff of Wake County, North Carolina,
PAT McCRORY, in his Official Capacity as
Governor of North Carolina,
ROY COOPER, in his Official Capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his Official Capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT
DONNIE HARRISON'S
MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION

NOW COMES Plaintiff Kirsten Messmer, ("Plaintiff") by and through counsel, and files this response in opposition to Defendant Donnie Harrison's Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion"). [D.E. 41].

In his Motion, the Sheriff seeks dismissal of this case on mootness grounds. To the extent that the Motion seeks a complete termination of the proceedings, the Motion should be denied. Plaintiffs are prevailing parties who are entitled to attorney fees under 42 U.S.C. § 1988, and Plaintiffs have moved the Court for an award of those fees. Pls. Mot. for Attorney Fees, [D.E. 43]. The Court's continuing equitable jurisdiction allows the Court to hear Plaintiffs' Motion for Attorney Fees, notwithstanding mootness caused by a change in a statute. *See, e.g., S-1 v. Spangler*, 832 F.2d 294, 297 (4th Cir. 1987)(determination of mootness on the merits does not preclude the award of attorney fees pursuant to 42 U.S.C. § 1988); *Black Police Ass'n v.*

District of Columbia Bd. of Elections and Ethics, 168 F.3d 525, 528 (D.C. Cir. 1999)(affirming an award of attorney fees notwithstanding passage of subsequent legislation mooted a Section 1983 challenge).

Plaintiffs do not contend that any substantive issues remain to be decided in this case. However, to the extent the Sheriff's Motion seeks termination of this case in its entirety, it should be denied.

Respectfully submitted this the 28th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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